Annual Nonprofit Tax Update

2023 Christian Leadership Alliance Outcomes Conference

Session Description

New legislation, IRS regulations and rulings, and court cases are a constant in the nonprofit tax landscape. We'll examine the current tax issues affecting Christian exempt organizations, including updates on IRS actions, legislation, and litigation.

Learning Objectives

- Identify legal challenges affecting ministries and plan for the changing environment for exempt organizations
- List recent tax law changes that affect ministries and churches
- Ascertain what future issues your organization may face

Key Takeaways

- Employee Retention Credit
  - Provides a fully refundable tax credit to eligible employers based upon qualified wages paid to employees
  - Use the guidance provided in Notice 2021-20 to assess whether you have experienced a full or partial suspension of services
  - The IRS has warned employers that they should be "wary of third parties who are advising them to claim the [ERC] when they may not qualify"
  - It is taking 6 – 16 months to receive ERC checks after the 941-X Form has been submitted
- IRS 2022–2023 Priority Guidance Plan – exempt organization highlights:
  - Guidance related to group exemption letters
  - Final regulations for supporting organizations
  - Various regulations regarding donor advised funds (sections 4966 and 4967)
- Changes to Retirement Plans: Secure 2.0 (Division T of the Consolidated Appropriations Act, 2023)
  - Makes changes to IRA, SIMPLE, 401(k), and 403(b) catch-up contribution rules
  - Gradually increases the age at which RMDs must start from age 72 to age 75
  - Creates new automatic enrollment and automatic escalation provisions for 401(k) and 403(b) plans
  - Creates a new rule requiring over age 50 catch-up contributions made by employees earning more than $145,000 to be deposited into a Roth 401(k) or Roth 403(b) account
  - Creates a new rule permitting a plan to treat qualified student loan repayments as eligible for the employer match in 401(k), 403(b), SIMPLE, and 457(b) plans
  - Consult with your plan counsel for potential updates to your retirement plan
- Conservation Easement Deduction Modification – The deduction for a charitable contribution of a conservation easement by a partnership, S-corporation, or other passthrough entity is now limited to 2.5 times the sum of each partner's, shareholder's, or other interest holder's basis in the passthrough entity; there are certain exceptions
- Access to Credits: Inflation Reduction Act of 2022 – New Sec. 6417 gives nonprofit organizations new access to numerous preexisting tax credits
  - Now nonprofits can receive direct cash payouts from the IRS
  - Building A Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action – Guide to the energy credits

- The available tax credits include the following:

Credit	What It Applies To	Base Credit Amount	Timing
Sec. 45 Production Tax Credit for Electricity for Renewables	Facilities generating electricity from solar, wind, biomass, geothermal, small irrigation, landfill and trash, marine and hydrokinetic renewable energy, and hydropower	3 cents per KW	Must begin construction before 12/31/2025
Sec. 48 Investment Tax Credit for Energy Property	Fuel cell, solar, geothermal, small wind, energy storage, biogas, microgrid controllers, and combined heat and power properties	6% of qualified investment	Must begin construction before 12/31/2025
Sec. 48(e) Increase in Energy Credit for Solar and Wind Facilities Placed in Service in Connection with Low-Income Communities	Solar and wind facilities with a maximum net output of less than 5 MW, including associated energy storage technology	6% of qualified investment; increased by 10% for facilities located in low-income communities or on Tribal Land, 20% for certain federally subsidized housing applications	Available in 2023 and 2024
Sec. 45Y Clean Electricity Production Tax Credit	Facilities generating electricity for which the greenhouse gas emissions rate is not greater than zero	3 cents per KW	Facilities placed in service after 12/31/2024
Sec. 45E Clean Electricity Investment Tax Credit	• Facilities generating electricity for which the greenhouse gas emissions rate is not greater than zero • Qualified energy storage technology	6% of qualified investment	Facilities placed in service after 12/31/2024
Sec. 48C Advanced Energy Project Credit	Projects that: • Re-equip, expand, or establish an industrial or manufacturing facility for the production or recycling of a range of clean energy equipment and vehicles; • Re-equip an industrial or manufacturing facility with equipment designed to reduce greenhouse gas emissions by at least 20%; or • Re-equip, expand, or establish an industrial facility for the processing, refining, or recycling of critical materials	6% of qualified investment	Expires when $10 billion in allocated funds have been used up
Sec. 30C Alternative Fuel Vehicle Refueling Property Credit	Refueling and charging properties providing electricity, ethanol, natural gas, hydrogen, biodiesel, and others located in low-income or rural areas	6% of cost, limited to $100,000 credit per item of property	Available between January 1, 2023 – December 31, 2032

- State withholding rules for remote employees
  - Perform a review of the state of residence of all remote employees
  - Identify any states represented in this group with an income tax withholding requirement you are not complying with
  - Register with that state as a withholding agent
  - Cease withholding in the employee's previous state of residence
  - The absence of meaningful IRS regulation of nonprofits leaves oversight to the states – typically through charitable solicitation registration or state Attorney General inquiries

- 2023 Key Tax Figures – download this convenient table

- Form 990-T lessons learned
  - IRC § 512(a)(6) – Final regulations were published in the Federal Register on December 2, 2020 (applicable to tax years beginning on or after December 2, 2020)
  - NOLs are used on a first-in, first-out basis
  - 3 buckets: pre-2018 NOL deduction, 2018 – 2020 NOL deduction (CARES Act NOLs), and 2021 and beyond NOL deduction
  - Estimated payments may now be required because the siloing rules and limits on use of post-2017 NOLs create a greater likelihood some tax will be due
  - Depreciation – IRC Section 179 and bonus depreciation are elective regimes and may not be as useful now that there are limitations on NOL usage
  - State ramifications: not all states have adopted the IRC § 512(a)(6) siloing rule, creating state tax differences from the Federal scheme.
  - Deductibility of wages for which ERC was claimed; may need to amend

- General filing updates
  - Exempt organization and tax practitioner challenges include Business Master File (EO BMF), IRS notices, e-filing issues, difficulties reaching the IRS

Additional nonprofit resources, including articles, blog posts, and recorded webcasts, are available at capincrouse.com

Questions? Contact:

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